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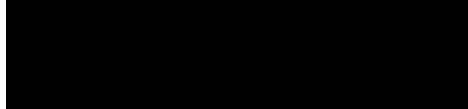
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MAY 13 2004

FILE: SRC 03 215 52853 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an institute of higher education. The petitioner filed a Form I-129, Petition for Nonimmigrant Visa, seeking O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in medical science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as an assistant professor of plastic surgery and as a physician with research and clinical responsibilities.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being one of a small percentage at the very top of the beneficiary's field of endeavor.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue to be addressed in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in medical science as defined by the statute and the regulations.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the

work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

The beneficiary in this matter is a 33-year old native and citizen of Canada. The record reflects that he received his medical degree in 1995 at the University of Ottawa. He completed a general surgery residency at the Memorial University of Newfoundland in the years 1995 through 2001. He performed a plastic surgery residency in the years 2001 through 2003 at the Vanderbilt University School of Public Medicine. He completed a one-year research fellowship at the Yale University School of Medicine. The record reflects that he was last admitted to the United States on April 6, 2004 as a B-2 nonimmigrant visitor and that he was previously admitted on July 10, 2001 as a J-1 exchange visitor, subject to the two-year foreign residency requirement.

After reviewing the evidence submitted in support of the petition, the director found the beneficiary ineligible for O-1 classification based on finding the sum of the evidence insufficient to demonstrate that he has "sustained" national or international acclaim and that his achievements have been recognized in his field of endeavor through "extensive documentation."

On appeal, the petitioner asserts that the beneficiary will be employed in a critical and essential capacity for the petitioner.

There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Neither is the record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

For criterion number one, the petitioner asserts that the beneficiary satisfies this criterion by virtue of his receipt of a scholarship in 1989 for his academic excellence at the University of Ottawa, making the Dean's Honor Roll at the University of Ottawa in the years 1989 and 1990, receipt of First Prize, Medical Year One from the Children's Hospital of Eastern Ontario in 1992. According to the evidence on the record, the beneficiary was awarded First Prize, Resident Research Competition (Plastic Surgery) in both 1998 and again in 1999. In 1999, the beneficiary received the Couves Resident Research Award from the Memorial University of Newfoundland. Finally, the beneficiary received the Canadian Association of General Surgeons/Merck Frost General Surgery Resident Award from Memorial University for teaching excellence in 2001. The beneficiary was competing with fellow students for the first four awards listed above. He competed with residents for the last two awards. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, awards for academic work, scholarships and fellowships cannot be considered awards in the field of endeavor. Moreover, only students

compete for such awards. As the petitioner did not compete with nationally or internationally recognized experts in the field, the awards cannot be considered evidence of the beneficiary's national or international acclaim. The petitioner failed to demonstrate that these were awards for excellence in the field of endeavor.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

For criterion number two, while the beneficiary is a member of the J.B. Lynch Society, the American College of Surgeons, the American Society of Plastic Surgeons, a Fellow of the Royal College of Physicians and Surgeons of Canada, and a diplomate member of the American Board of Surgery, the evidence is insufficient to establish that these are associations which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. The evidence on the record indicates that the beneficiary became a Diplomate of the American Board of Surgery based upon his successful completion of its certifying examination. The beneficiary does not satisfy this criterion.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date and author of such published material, and any necessary translations.

No evidence was submitted in relation to criterion number three.

Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.

No evidence was submitted in relation to criterion number four.

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.

For criterion number five, while the beneficiary has published results of his research, the record does not show that his research is considered of major significance in relation to other similar work being performed. The petitioner provided CIS with six testimonials from distinguished medical experts in support of the instant petition. The majority of the testimonials' authors indicated that there is a shortage of reconstructive surgeons in the United States. All of the testimonials' authors spoke highly of the beneficiary's expertise. One stated that the beneficiary has had a significant impact on the treatment of soft tissue injuries at Vanderbilt University, but he failed to state how the beneficiary's work has made such an impact. The testimonials are insufficiently specific as to the nature of the beneficiary's contributions. The beneficiary does not satisfy this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

For criterion number six, the beneficiary has authored or co-authored five articles that were published in peer reviewed journals. He has written numerous abstracts. The record contains no evidence that independent researchers have cited the petitioner's work. As such, we cannot conclude that the petitioner's publication history is indicative of national or international acclaim.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

For criterion number seven, the petitioner submitted letters asserting that the beneficiary would play a critical role for several institutions in the future.

In a letter from the Chief Executive Officer of the Metropolitan Government of Nashville and Davidson County, the author indicated that the beneficiary would play an important role at Nashville General Hospital at Meharry by providing plastic surgery to the city's indigent population.

A letter from the Chief of Surgery at the Nashville General Hospital at Meharry states that the author has been unable to recruit a fulltime plastic surgeon for the past four years and that the beneficiary would provide essential patient care services at the Meharry Medical College.

Dr. R. Bruce Shack, Professor and Chair of the Department of Plastic Surgery, Vanderbilt University, stated "the need for plastic surgeons with an ability and interest in microvascular reconstructive surgery is critical."

In review, the petitioner failed to establish that the beneficiary has played an essential or critical role at a distinguished institution. It is not enough to claim that the petitioner will play a critical role in the future. The regulation requires evidence that the beneficiary has played a critical or essential role at a distinguished institution.

Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

For criterion number eight, the petitioner has offered to pay the beneficiary an annual salary of \$150,000. In the absence of salary surveys, the proffered salary could not be evaluated. The petitioner failed to establish that the beneficiary satisfies this criterion.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained national or international acclaim" and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized. In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not yet risen to this level.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.